

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Florida Power and Light Company)	File Number EB-01-TP-371
9250 West Flagler Street)	
Miami, FL 33174)	NAL/Acct. No. 20023270004
)	
Antenna Structure Registration 1061028)	FRN Number 0001-8253-14
)	
Miami, FL 33174)	

FORFEITURE ORDER

Adopted: April 23, 2002

Released: April 25, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Florida Power and Light Company (“Florida Power”) for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves Florida Power’s failure to exhibit all red obstruction lighting on its Palm Bay, Florida antenna structure between sunset and sunrise.

2. On January 8, 2002, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of ten thousand dollars (\$10,000) to Florida Power for the noted violation.² Florida Power filed a response to the *NAL* on January 28, 2002.

II. BACKGROUND

3. On September 12, 2001, the Commission’s Tampa Office received a complaint regarding a lighting problem on an antenna structure with antenna structure registration (“ASR”) number 1061028, in Palm Bay, Florida. The complainant alleged that the lighting problem had existed for approximately one year and that on several occasions, he had attempted to contact the tower owner but was unable to satisfactorily resolve the problem. The FCC’s ASR database confirmed that Florida Power was the owner of the tower assigned ASR number 1061028 and located in Palm Bay. The same day, the Tampa Office contacted Florida Power to determine the status of the lights on the antenna structure. On September 13,

¹ 47 C.F.R. § 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 20023270004 (Enf. Bur., Tampa Office, released January 8, 2002).

2001, Mr. Michael Lawler of Florida Power left a telephone message that the Palm Bay tower lights had been repaired the previous evening. On October 29, 2001, the Tampa Office received another complaint regarding the lighting problem on the Palm Bay antenna structure. The complainant alleged that the red strobe tubes had been removed due to interference and that for the last several months, white daylights were flashing 24 hours a day and the obstruction lights were on constantly.

4. On October 30, 2001, the Tampa Office contacted the Federal Aviation Administration (“FAA”) and was notified that a Notice to Airmen (“NOTAM”) had not been issued for the antenna structure. FCC Form 854, “FCC Application for Antenna Structure,” for Florida Power indicates that the Palm Bay antenna structure is to exhibit red obstruction lights from sunset to sunrise. The Tampa Office made another attempt to contact Mr. Lawler. Mr. Lawler’s voicemail message indicated that he would be out of the office until October 31, 2001. The Tampa Office then called the person listed on FCC Form 854, Mr. Tony Padilla. Mr. Padilla stated that he would investigate and provide the status of the lights and lighting specifications for the structure. On November 9, 2001, the Tampa Office left a voicemail message for both Lawler and Padilla requesting the status of the lights on the antenna structure. No response was received.³

5. On November 19, 2001, the FAA confirmed that a NOTAM still had not been issued for the antenna structure. The FAA also confirmed that the lighting specifications for the antenna structure are medium white strobe lights during the day and red lights at night. On November 27, 2001, agents from the Tampa Office performed an inspection of the antenna structure site. The agents observed the structure at approximately 4:25 P.M. During the inspection, the agents observed flashing strobe lighting at the top and middle of the structure. The agents also observed red sidelights, and red beacons installed at the middle and top of the structure. The agents returned to the site on November 27, 2001 after sunset at approximately 6:00 P.M. The agents noted that the only red lights illuminated were at the 2/3 level sidelights. A white light was flashing at the top. In the middle of the structure, a white light was flashing only on the south side of the structure. No red beacons were lit in the middle of the structure. The red sidelights at the 1/3 level were not lit.

6. On January 8, 2002, the Tampa Office issued an *NAL* in the amount of \$10,000 to Florida Power for failure to properly exhibit red obstruction lights between sunset and sunrise on the Palm Bay antenna structure in willful violation of Section 17.51(a) of the Rules. The Tampa Office also found that Florida Power did not notify the FAA of the tower lighting malfunctions. In its response to the *NAL*, Florida Power acknowledges the violation, but argues that it has taken substantial and swift actions to have the lighting repaired on its Palm Bay tower, and therefore, the forfeiture should be rescinded or reduced. Florida Power indicates that upon receipt of each of the complaints from the Tampa Office in September 2001 and October 2001, it immediately dispatched personnel to repair the antenna structure’s lighting system. Florida Power asserts, however, that damage may have occurred to the lighting system after each repair and caused the lights to malfunction. Specifically, Florida Power speculates that “subsequent malfunctions may have been caused by repeated lightning strikes that damaged critical components, which may have led to a failure of the automatic monitoring system to alert Florida Power personnel.” Florida Power states that in January 14, 2002,⁴ it contacted the FAA to report that the lights

³ Florida Power states that it appears that a “miscommunication or disconnect” occurred, and the Tampa Office did not receive Mr. Padilla’s message that the Palm Bay tower lights had been repaired.

⁴ Although Florida Power’s response states that it contacted the FAA on “January 14, 2001,” we believe, based on the date of the *NAL*, the date of its response, and other dates included in the response that it meant to state that the event occurred on January 14, 2002.

were malfunctioning on its Palm Bay tower. According to Florida Power, a NOTAM was issued, and Florida Power technicians investigated and resolved the tower lighting issue. Florida Power claims to have subsequently examined the circuitry for the automatic monitoring system and improved operations.

7. Florida Power contends that at no time was its antenna structure ever a “dark tower”. Specifically, Florida Power asserts that at all times, lights were illuminated on its antenna structure, although they may not have been operating in the proper mode. After investigation and repair of the tower’s lighting, argues Florida Power, it will now cycle properly from daytime to nighttime operation at the appropriate times. Moreover, Florida Power claims that in addition to repairing its antenna structure, it has also improved its antenna structure monitoring and record keeping procedures to guard against future mishaps. Florida Power also questions the accuracy of the complaints received by the Commission. Specifically, Florida Power states that although it cannot identify precisely when the tower lights began to malfunction, it does not believe the problem existed for the length of time alleged in the complaint. Also, Florida Power claims that contrary to the complaint, it never removed the red strobe tubes from the tower. Florida Power contends that in view of the corrective measures taken to repair the tower lighting system, the enhancements it has made to guard against future tower lighting failures, and its history of overall compliance, the proposed forfeiture should be cancelled or significantly reduced. Florida Power states that in cases where towers have fallen “completely dark”, the Commission has reduced proposed forfeitures on the basis of a company’s history of compliance with the Commission’s rules.⁵ Florida Power contends that in this case, its tower was not dark. Rather, Florida Power states that the tower was lit so that aircraft could see it after sunset.

III. DISCUSSION

8. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”)⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining Florida Power’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

9. Section 17.51(a) of the Rules provides that *all* red obstruction lighting must be exhibited from sunset to sunrise unless otherwise specified in the ASR (emphasis added). Florida Power acknowledges that some of the red obstruction lights on its Palm Bay tower malfunctioned. The accuracy of the complaints is not at issue here. Section 1.80(b)(4) of the Rules prescribes a base forfeiture amount of \$10,000 for this violation. Florida Power argues, however, that the forfeiture amount should be rescinded or reduced in light of its immediate actions to repair the lighting on the tower and the

⁵ *American InfoAge, LLC*, 16 FCC Rcd 16185 (2001) (reducing forfeiture from \$10,000 to \$8,000 on the basis of overall history of compliance); *USA Tower, Inc.*, 16 FCC Rcd 13182 (2001) (reducing forfeiture from \$10,000 to \$8,000 on the basis of overall history of compliance).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

enhancements it has made to guard against future tower lighting failures. We disagree. Florida Power's remedial efforts to correct the violation, while commendable, are not a mitigating factor. *See Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973). In addition, although Florida Power asserts that it investigated and repaired the tower's lighting system in January 2002,⁹ it is undisputed that at the time of the November 27, 2001 inspection, it violated Section 17.51(a) of the Rules by failing to properly exhibit red obstruction lights between sunset and sunrise.

10. Further, to the extent that lightning strikes may have caused subsequent malfunctions of the tower's lighting system and automatic alarm system after each repair, and thus, Florida Power did not receive alerts to timely repair the damage, we do not believe that this warrants mitigation of the forfeiture amount. Section 17.47 of the Rules requires antenna structure owners registered with the Commission and subject to lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure the proper functioning of the antenna structure's lights.¹⁰ Alternatively, antenna structure owners are required to "provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner".¹¹ It does not appear from the record before us that Florida Power made daily observations of its Palm Bay tower, nor does Florida Power present any evidence that it had properly inspected or maintained its automatic alarm systems, which would have led it to discover the lighting violations. Finally, Florida Power argues that we should consider its history of overall compliance with the Rules. We will do so and reduce the \$10,000 forfeiture to \$8,000.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² Florida Power IS LIABLE FOR A MONETARY FORFEITURE in the amount of eight thousand dollars (\$8,000) for failure to properly exhibit red obstruction lighting between sunset and sunrise on its antenna structure in willful violation of Section 17.51(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 20023270004 and FRN 0001-

⁹ Although Florida Power reports in its response that it dispatched technicians on "January 14-15, 2001" to investigate and repair the lighting system malfunctions, for the reasons stated in note 4, *supra* we believe that the actual date of reference is January 14-15, 2002.

¹⁰ 47 C.F.R. § 17.47(a)(1).

¹¹ 47 C.F.R. § 17.47(a)(2).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 U.S.C. § 504(a).

8253-14. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to Florida Power and Light Company, 9250 West Flagler Street, Miami, Florida, 33174, and to its counsel, Nancy K. Spooner, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.